IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 344 OF 2005

Shahajadbi w/o Dadasaheb Shaikh
& ors. ... Appellants

V/s

Chandbi Peersaheb Ganjiwale
(since deceased through her L.Rs.)
Sau Jaitunbi w/o Imam Shaikh & ors. ... Respondents

Mr. S.K. Chinchalikar for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 19TH SEPT., 2005

P.C.:

1. This appeal is filed by the appellants against the judgment and order passed by the Addl. District Judge, Sangli, dated 10.9.2004 against the judgment and order passed by the Civil Judge, J.D., Jat dated 12.2.2001.

2. This appeal is filed against the judgment and order passed by the learned Addl. District Judge, whereby the suit was decreed by partition and possession of the respective shares.

3. I have heard the learned counsel for the appellants. Perused the record.

4. The plaintiffs filed the suit for partition and separate possession of the respective shares and suit came to be decreed and with direction regarding preliminary decree to be drawn up according to the shares determined.

Defendants contested the suit on various grounds and sought dismissal of the suit.

The learned Trial Judge adjudicated the dispute on merits and decreed the suit.

5. The appeal was carried to the lower appellate Court. The learned appellate Court Judge, after hearing both sides, modified the shares confirming the judgment and order passed by the lower Court. While doing so, the lower appellate Court passed following order :-

> "(1) The appeal dismissed.
> (2) Order passed by the learned Civil Judge, J.D. Jath, whereunder he decreed R.C.S.

No.93 of 1985 is confirmed.

(3) Remaining order passed by the learned Civil Judge is modified as follows.....".

Therefore, according to the learned counsel for the appellants, the appeal should have been disposed of with direction that it was partly allowed. In my considered view, it is a technical error and can be rectified by direction of this Court at this stage itself.

It was further submitted that the modified shares of the parties by the appellate Court are accepted. However, there is no specific direction regarding which part of the property should go to which party. However, it is needless to mention that preliminary decree is being passed by this Court and application for final decree will have to be filed, in which course the parties will have option to agitate all these details before the execution Court and those directions regarding which portion should go to which party, cannot be given by the decree Court in appeal.

6. In view of this position, nothing remains in this appeal.

7. It is hereby directed that the appellants and other parties will have liberty to agitate their cause for specific portions of the property in respect of their shares in the partition before the execution Court.

With this direction, the appeal stands disposed of with no order as to costs.

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